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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. BRIDGET C. GALASSI, Defendant and Appellant.	B242663 (Los Angeles County Super. Ct. No. SA078606)

APPEAL from a judgment of the Superior Court of the County of Los Angeles, Cynthia Rayvis, Judge. Affirmed.

Gail Ganaja, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Eric E. Reynolds and Esther P. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Bridget C. Galassi (defendant) was convicted of leaving the scene of an accident (Veh. Code, § 20001, subd. (a))[1]. On appeal, defendant contends that the trial court erred in failing to instruct the jury, sua sponte, on the defense of necessity for leaving the scene of an accident, and precluding the defense from inquiring about a civil action purportedly filed by one of the prosecutor's witness against defendant arising from the same incident upon which the charges against defendant were based. We affirm the judgment.

BACKGROUND

A. Factual Background

1. Prosecution Evidence

On August 30, 2011, defendant, a newly hired teacher at the Vista Del Mar school (school), attended an orientation program for new faculty employees. Also present at the

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[1] Vehicle Code section 20001, subdivision (a) provides, "The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 [applicable upon injury or death of another as a result of the accident] and 20004 [applicable upon death of another as a result of the accident]." Vehicle Code section 20003, subdivision (a), provides, "The driver of any vehicle involved in an accident resulting in injury to or death of any person shall also give his or her name, current residence address, the names and current residence addresses of any occupant of the driver's vehicle injured in the accident, the registration number of the vehicle he or she is driving, and the name and current residence address of the owner to the person struck or the driver or occupants of any vehicle collided with, and shall give the information to any traffic or police officer at the scene of the accident. The driver also shall render to any person injured in the accident reasonable assistance, including transporting, or making arrangements for transporting, any injured person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if that transportation is requested by any injured person."

orientation program were assistant principal Scott Decker and vice-president of education Donna Baker.

While Baker was discussing a specific policy at the orientation, defendant voiced her disagreement with the policy, gathered her belongings, stood up, said, "I'll pray for all of you," and left the orientation. Baker testified that she did not know if defendant was leaving permanently and no longer wanted to be employed, or was leaving temporarily because defendant was simply overwhelmed by the situation at the time.

Baker "walked" after defendant, and Decker followed Baker. Baker called out defendant's name to defendant several times and asked defendant what was wrong, but defendant did not respond. Defendant went into the parking lot and entered the driver's side of her vehicle—a small sports utility vehicle. Baker testified that either Decker or Baker said, "It looks like she's leaving. She's not answering. Does she have keys [to the school]?" When teachers are hired at the school, they are typically given keys to the school, but by the time of trial Baker had determined that defendant had not been given keys.

Decker and Baker approached defendant's vehicle. Baker stopped behind defendant's vehicle to wait for Decker to retrieve the keys from defendant. Decker testified that he lightly knocked on the driver's side window of the vehicle and said something like, "You know what? Give me your work keys because I've got a feeling you're not coming back." Baker testified that Decker tapped on the driver's window of defendant's vehicle and said, "Do you have keys?" Decker testified that he had briefly met defendant before this encounter.

Defendant started her vehicle. Decker knocked on the window again and, without screaming, said, "I just need your work keys." Defendant did not make eye contact with Decker nor did she say anything to him.

Baker testified that she saw the backup lights to defendant's vehicle come on, and because she was behind the vehicle she placed her hands on the rear of the vehicle and said, "knock, knock, I'm here." Decker testified that he hit on the driver's side window of defendant's vehicle and said, "What the f--k are you doing? You almost hit her."

Decker testified that it was the only time he used the " 'F' word" during the incident. Defendant said, "Tell her to move then," and Decker responded, "Well, give her a second. She is." Baker then moved from behind the vehicle because she did not want to be behind a vehicle that was backing up.

Baker testified that as defendant's vehicle backed up, presumably at an angle, Decker was between defendant's vehicle and another vehicle, Decker jumped on the hood of defendant's vehicle to avoid being pinned between the two vehicles, and Baker believed that Decker said, "You got to be f'ing kidding me." The vehicle then suddenly went forward down a hill and Decker fell off the hood after the vehicle traveled forward about six or eight feet.

Decker testified that as defendant's vehicle backed up, he walked alongside the vehicle and he believes he said, "Hey, all I need is your keys." Decker testified that "in my mind, I'm going, "'All I need is your keys. You can leave.'" Decker believes that he may have said to defendant, "All I want is your keys," "[a]nd then you can go home."

Decker testified that as defendant's vehicle backed up, the drivers' side of the vehicle came close to him. He noticed that he was "clear" of the vehicle that was parked adjacent to where defendant's vehicle was previously parked and, therefore, he continued to walk. Decker testified that defendant's vehicle then came "right at me" quickly, he jumped straight up to avoid being run over, and the front of defendant's vehicle hit his left leg and he landed on the hood of the vehicle facing the windshield. Assistant principal Jayne Merrill testified that she was walking nearby and saw defendant's vehicle move forward in Decker's direction, hit Decker, and that Decker landed on the hood of the vehicle. Decker testified that he did not try to stop physically defendant's vehicle from exiting the parking space.

Decker and defendant made eye contact. Decker testified that defendant's vehicle went forward with him on the hood of the vehicle, and he fell off the vehicle after it traveled about 20 to 25 yards. Decker landed on the back of his heels and fell backwards onto the ground.

Baker and others ran to Decker. Decker's head was bleeding, was disoriented, and remained on his back for about five or six minutes. Defendant did not stop, render aid to Decker, or provide any information, but rather left the scene.

The paramedics arrived and took Decker to the hospital where he was treated for a concussion and some abrasions. Decker thereafter suffered intermittent severe headaches, neck pains, and anxiety.

2. Defendant's Evidence

Defendant testified on her own behalf. On the day of the orientation, defendant realized that the school "was not a good fit" for her. When defendant realized that she was not able to question the policies of the school, she decided that she was "no longer welcome" at the school and left. According to defendant, as she was going to her vehicle she was "chased" by Baker and Decker. Decker and Baker "taunted" defendant with comments like "does this mean you're coming back now? Are you coming back? Are you leaving for good?" Defendant did not respond to these comments because she "was in fear and . . . was feeling all choked up inside." Defendant testified that she "was scared for [her] life."

On cross-examination, defendant acknowledged that she did not leave the orientation because she felt like she was not welcome; defendant left the orientation because she did not agree with the policies of the school. Defendant also agreed with the prosecutor that asking someone if they were "leaving" or were "leaving for good" is not necessarily taunting.

Once defendant was in her vehicle, Decker banged on her window asking, "Where are the fucking keys? Give me the fucking keys." Defendant testified that "at the time I was thinking [Decker used the "F word"] just once [during the incident], but I [now] think [he used the "F word"] about two or three" times. Defendant did not know to what keys Decker was referring. Defendant looked in her purse to "double-check" that she had not been given keys to the school. Defendant did not tell Decker and Baker that she did

not have the keys because "they didn't ask," and defendant was too emotionally "choked up" to speak.

Defendant saw Baker standing behind defendant's vehicle; blew her vehicle horn three times, and backed up slowly. Baker placed her hand on defendant's vehicle. Defendant was not planning on hitting anyone with her vehicle. Defendant probably told Decker to tell Baker to move, and defendant asked Decker to leave. Defendant continued to reverse her vehicle, and when she was about to move forward, Decker jumped on the hood of her vehicle. Defendant was "rattled and startled," and stopped her vehicle to think of what she should do. Defendant, recounting that she had been "attacked" by Decker and Baker, was concerned for her safety.

Defendant's vehicle traveled forward about three feet when Decker jumped off defendant's vehicle, defendant heard Baker say, "Let her go," and defendant continued driving because she was "scared for [her] life." Defendant looked in her rearview mirror and saw that Decker landed on his feet and was standing up, and defendant drove home. Defendant did not cause Decker's injuries. Defendant did not call the police because she was "scared for [her] life," and she did not contact Decker or the school to explain what happened. Defendant wanted "to do the right thing" so while she was at church she called her husband and explained what had happened and that she did not hit Decker with her vehicle.

On August 31, 2011, the day after the incident, defendant took a photograph of her vehicle showing where, based on the disturbance of dust, Decker had landed on the vehicle's hood, because "if something did happen, then I had some evidence to show that I didn't do it." Defendant then testified that she did not feel that she might have to show that she did not "do this," stating, "Initially, I thought that this was all a misunderstanding. I spoke to my husband and . . . we thought this was a misunderstanding. I didn't want any problems at the school. I just wanted to be on my way as I'm sure [Decker] . . . wanted to be on his way, too. He looked fine when I left. So I didn't see any reason to report it, but just in case, it's always good to take a picture."

B. Procedural Background

The District Attorney of Los Angeles County filed an information charging defendant with assault with a deadly weapon in violation of Penal Code section 245, subdivision (a)(1) (count one), leaving the scene of an accident in violation of Vehicle Code section 20001, subdivision (a) (count two), and assault by means likely to produce great bodily injury in violation of Penal Code section 245, subdivision (a)(1) (count three).

Following a trial, the jury found defendant guilty of count two—leaving the scene of an accident in violation of Vehicle Code section 20001, subdivision (a), and not guilty of the remaining counts. The trial court placed defendant on formal probation for a period of three years.

DISCUSSION

A. Sua Sponte Jury Instruction

Defendant contends that the trial court erred in failing to instruct the jury, sua sponte, on the defense of necessity for leaving the scene of an accident. We disagree.

Typically, "[a] trial court has a duty to instruct the jury 'sua sponte on general principles which are closely and openly connected with the facts before the court.' [Citation.]" (*People v. Abilez* (2007) 41 Cal.4th 472, 517.) "In the absence of a request for a particular instruction, a trial court's obligation to instruct [sua sponte] on a particular defense arises '"only if [1] it appears that the defendant is relying on such a defense, or [2] if there is substantial evidence supportive of such a defense and the defense is not inconsistent with the defendant's theory of the case."' [Citations.]" (*People v. Dominguez* (2006) 39 Cal.4th 1141, 1148; *People v. Maury* (2003) 30 Cal.4th 342, 424.)

"[N]ecessity is an affirmative defense recognized based on public policy considerations." (*People v. Kearns* (1997) 55 Cal.App.4th 1128, 1134-1135.) "'To justify an instruction on the defense of necessity, a defendant must present evidence

sufficient to establish that [he] violated the law (1) to prevent a significant and imminent evil, (2) with no reasonable legal alternative, (3) without creating a greater danger than the one avoided, (4) with a good faith belief that the criminal act was necessary to prevent the greater harm, (5) with such belief being objectively reasonable, and (6) under circumstances in which [he] did not substantially contribute to the emergency. [Citations.]' [Citation.]" (*People v. Galambos* (2002) 104 Cal.App.4th 1147, 1160.)[2] "In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt . . . .' [Citations.]" (*People v. Salas* (2006) 37 Cal.4th 967, 982.)

Defendant contends that she fled the scene of the accident and did not call the police because she was "scared for [her] life." There is insufficient evidence, however, to support a defense of necessity, and therefore the trial court did not err in failing to instruct on the defense.

"'There must be a showing of imminence of peril before the defense of necessity is applicable. A defendant is "not entitled to a claim of duress or necessity unless and until he demonstrates that, given the imminence of the threat, violation of [the law] was the only reasonable alternative." [Citation.] The uniform requirement of California authority discussing the necessity defense is that the situation presented to the defendant

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[2] CALCRIM No. 3403 provides, "The defendant is not guilty of _____ <insert crime[s]> if (he/she) acted because of legal necessity. [¶] In order to establish this defense, the defendant must prove that: [¶] 1. (He/She) acted in an emergency to prevent a significant bodily harm or evil to (himself/herself/ [or] someone else); [¶] 2. (He/She) had no adequate legal alternative; [¶] 3. The defendant's acts did not create a greater danger than the one avoided; [¶] 4. When the defendant acted, (he/she) actually believed that the act was necessary to prevent the threatened harm or evil; [¶] 5. A reasonable person would also have believed that the act was necessary under the circumstances; [¶] AND [¶] 6. The defendant did not substantially contribute to the emergency. [¶] The defendant has the burden of proving this defense by a preponderance of the evidence. This is a different standard of proof than proof beyond a reasonable doubt. To meet the burden of proof by a preponderance of the evidence, the defendant must prove that it is more likely than not that each of the six listed items is true."

be of an emergency nature, that there be threatened physical harm, and that there was no legal alternative course of action available.' [Citations.]" (*People v. Galambos*, *supra*, 104 Cal.App.4th at pp. 1162-1163.) Defendant testified that when Decker "jumped off" the hood of her vehicle she heard Baker say, "Let her go." Defendant therefore was not in reasonable fear that Baker and Decker would pursue her after she drove a short distance away from them. Defendant was not in imminent peril when she drove out of the parking lot and left the scene of the accident.

In addition, defendant had an alternative to fleeing the scene of the accident. Before or immediately after exiting the parking lot, after establishing a reasonable distance between her, on the one hand, and Decker and Baker, on the other hand, defendant could have asked someone in the vicinity, for example, Merrill, who testified that she was walking near the incident, to call the police. She also could have pulled out of the parking lot, parked nearby, and called the police herself. Instead she drove away (i.e., fled the scene of the accident) and never called the police.

Even if the trial court did err in failing to instruct the jury, sua sponte, on the defense of necessity, the error was harmless under either *Chapman v. California* (1967) 386 U.S. 18, 22, 24 (*Chapman*) [harmless beyond a reasonable doubt], or *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*) [reasonable probability of more favorable result]. CALCRIM No. 3403 requires that defendant has the burden of proving the defense of necessity by a preponderance of the evidence. A reasonable juror would not find that the attempts by Decker and Baker to retrieve the school keys from defendant constituted a "significant evil." There was no evidence that Decker or Baker attacked defendant or made any threats of imminent harm to her.

In addition, a reasonable juror would find that defendant substantially contributed to the emergency. It is unreasonable for defendant to characterize the inquiries made of her by Decker and Baker as to whether defendant was "coming back" or was "leaving for good" as taunts, and for defendant not to respond to them—thereby escalating the incident—because she feared for her life. Similarly, after Decker asked defendant for "the keys," and defendant looked in her purse to "double-check" that she had not been

given any keys to the school, it was unreasonable that defendant did not tell Decker and Baker that she did not have the keys to the school—further escalating the incident—because "they didn't ask," and defendant was too emotionally "choked up" to speak. Therefore, to the extent that there was an "emergency" that purportedly justified defendant leaving the scene of the accident, defendant substantially contributed to it.

B. Precluding Defendant from Questioning Decker about a Civil Lawsuit

Defendant contends that the trial court prejudicially erred in precluding the defense from inquiring about a civil action purportedly filed by Decker against defendant arising from the same incident upon which the charges against defendant were based, because that inquiry was relevant to Decker's credibility. We disagree.

1. Standard of Review

We review a trial court's evidentiary rulings for abuse of discretion. (*People v. Jablonski* (2006) 37 Cal.4th 774, 805; *People v. Harris* (2005) 37 Cal.4th 310, 335; *People v. Alvarez* (1996) 14 Cal.4th 155, 201.) """[A] trial court's ruling will not be disturbed, and reversal . . . is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice."""" (*People v. Foster* (2010) 50 Cal.4th 1301, 1328-1329.)

2. Applicable Law

"'Relevant evidence' means evidence, including evidence relevant to the credibility of a witness . . . , having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (Evid. Code, § 210.) "The existence of a bias, interest, or motive to falsify is a commonly used factor to attack the credibility of a witness. (Evid. Code, § 780, subd. (f).) Such bias, interest or motive may be elicited by cross-examination of a witness as well as established by extrinsic proof. [Citations.]" (*People v. James* (1976) 56 Cal.App.3d 876, 886.)

3. Background Facts

During the cross-examination of Decker, defendant's counsel asked, "Have you hired an attorney in this case?" The prosecutor objected on the ground of relevance. The following exchange then occurred outside the presence of the jury: "[Defendant's counsel:] This goes directly to motive for him to talk about his injuries, talk about how he was injured, talk about who caused this. He's hired a civil attorney. His name is Brian Rodeo. I think that motive is crucial when it comes to credibility. That's where I'm coming from. [¶] [Trial court:] I think it's irrelevant whether he filed a civil suit in this case, and I'm not going to allow it."

4. Analysis

Defendant contends that the trial court erred in excluding evidence of Decker's purported civil action because, "If Decker was intending to pursue a civil action against defendant, then defendant's conviction of the related criminal charges could only help Decker's pursuit for monetary redress." The trial court has discretion to exclude evidence. (*People v. Hart* (1999) 20 Cal.4th 546, 604-605.) Even if the trial court did err in excluding the proposed evidence, the error was harmless under the standard of either *People v. Watson*, *supra*, 46 Cal.2d at p. 836, or *Chapman*, *supra*, 386 U.S. at p. 24.

Defendant argues that she was prejudiced by excluding evidence of Decker's purported civil action because the proffered evidence impacted negatively Decker's credibility and "reasonably supported an inference that Decker was downplaying his role in creating the situation." Decker's testimony concerning his role in the incident, however, was cooberated by the testimony of Baker and Merrill. Thus, even had the evidence been admitted, there is not a sufficient probability that the result would have been different so that it was prejudicial.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, Acting P. J.

We concur:

KRIEGLER, J.

KUMAR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.